

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17470
March 12, 2015**

RESOLUTION

RESOLUTION T-17470. This resolution adopts the \$11,191,356.00 proposed payment by Verizon Wireless, Inc. LLC, to the California Public Utilities Commission for the sum of past unpaid public purpose program surcharges and user fees, plus interest, from the sale of prepaid wireless service prior to February 2012.

SUMMARY

By this Resolution, the Commission adopts a proposal by Verizon Wireless, Inc. LLC (Verizon) to resolve past unpaid public purpose program surcharges and user fees owed prior to February 2012. In its proposal, Verizon has agreed to pay the Commission \$11,191,356 as the sum of past unpaid surcharges and user fees owed, plus interest, from the sale of prepaid wireless services between August 2005 and January 2012. More specifically, Verizon has agreed to pay the full amount of all surcharges and user fees owed between August 2005 to January 2012 (\$10,545,989), as well as to provide interest on the amount owed calculated at one-half of the average 2005 -2014 calendar year 90-day AA Financial Commercial Paper Interest Rate (\$645,367). Approving this proposal satisfies any claim that the Commission may have against Verizon for unpaid surcharges and user fees from August 2005 to January 2012. The Communication Division recommends the Commission adopts this Resolution.

BACKGROUND

The Commission collects and distributes funds to support six public purpose programs for the benefit of California ratepayers. These programs are mandated by Public Utilities (P.U.) Code §§ 270-278.5 and §§ 280-281. Funds to support these programs are collected from end users (ratepayers) as surcharges based on intrastate revenue, and remitted by carriers to the Commission through its Telecommunications User Fees Filing System (TUFFS). The CPUC requires all pre- and postpaid landline, cellular, Voice over Internet Protocol and reseller carriers authorized to conduct business in California to collect and remit surcharges. The six programs are:

- California High-Cost Fund A (CHCF-A): This program provides a source of supplemental revenue to small local exchange carriers (LECs) for the purpose of minimizing any basic telephone service rate disparity between rural and metropolitan areas;
- California High-Cost Fund B (CHCF-B): This program provides subsidies to carriers of last resort (COLRs) for providing basic local telephone service to residential customers in high-cost areas;
- Universal Lifeline Telephone Service (ULTS): This program provides discounted home wireline phone and wireless phone services to qualified households;
- Deaf and Disabled Telecommunications Program (DDTP): This program provides telecommunications devices to deaf or hearing-impaired consumers;
- California Teleconnect Fund (CTF): This program provides a 50% discount on selected communications services to schools, libraries, hospitals, and other non-profit organizations; and
- California Advanced Services Fund (CASF): This program supports the deployment of broadband facilities and adoption of broadband services in unserved and underserved areas of the state through project-specific grant funding.

Additionally, the Commission collects funds as authorized by P.U. Code §§ 401 and 402 as Public Utilities Commission Reimbursement Fees (user fees), providing the authority to collect these user fees from customers through the carriers' billings.¹ Revenues collected in the form of this fee fund the Commission's operating budget, which allows it to regulate telecommunications utilities.

On August 13, 2008, the Utility Audit, Finance, and Compliance Branch (UAFCB) of the Commission's Division of Water and Audits issued a Report on the Regulatory Compliance Audit of the Public Programs Surcharges and Claims and User Fees by Verizon for the year ending December 31, 2006. The audit report found that Verizon had not paid surcharges and user fees on revenues collected from prepaid wireless service.² On September 15, 2008, Verizon disputed this audit finding by responding

¹ VoIP providers are not required to collect and remit CPUC user fees. See P.U. Code § 285.

² This includes several Verizon-owned companies authorized by the CPUC to conduct business in California: California RSA No. 4 Limited Partnership (U-3001-C); Fresno MSA Limited Partnership (U-3005-C); GTE Mobilnet of California Limited Partnership (U-3002-C); GTE Mobilnet of Santa Barbara Partnership (U-3011-C); Los Angeles SMSA Limited Partnership (U-3003-C); Modoc RSA Limited

that prepaid wireless services were not taxable. Two weeks later, on September 29th, UAFCB issued its Final Report of Regulatory Compliance, stating that it respectfully disagreed with Verizon and reasserted that all communication services are subject to surcharges unless explicitly exempted.

On January 28, 2009, CD's then-Director Jack Leutza issued a letter citing the UAFCB Regulatory Compliance Audit Report, requesting that Verizon remit \$386,685 for underpayments of surcharges, and applicable interest. The letter also stated that Verizon "is a telephone corporation that is under the jurisdiction of the Commission and is required to assess CPUC User Fees and public purpose program surcharges based on intrastate revenues, with certain explicit exemptions. At this time, prepaid wireless service has not been exempted from the CPUC user fees and public purpose program surcharges."

On April 17, 2009, CD sent a follow-up email to Verizon reiterating the Commission's position that surcharges must be paid on the intrastate portion of prepaid wireless service, and recommended that payment be made to avoid the potential for additional interest and/or penalty assessment. The CD Director followed with a May 1, 2009 letter, stating "[f]ailure to comply with this directive will result in this matter being referred to the Commission's Consumer Protection and Safety Division's Enforcement Branch to open an Order to Show Cause as to why Verizon should not pay the amount due for the unpaid surcharges."

On May 8, 2009, Verizon remitted \$44,957 of the \$386,685 in unpaid surcharges, stating that amount "represents payment for a portion of the current regulatory compliance audit findings for calendar years 2003 through 2007. Specifically, these payments related to exempt customer findings, which VZW concedes. Please accept these partial payments as VZW's good-faith attempt to significantly narrow the scope of the audit controversy." Although Verizon submitted a partial payment in response to the audit findings, Verizon refused to pay the unpaid surcharges for its prepaid wireless services. Verizon continued to maintain that prepaid wireless services were exempt from surcharges as concluded by the UAFCB Audit and CD and Verizon formally asked the Commission in 2009 to open a proceeding to resolve this dispute. The Commission declined Verizon's request, as instead focusing its resources on a review of another prepaid wireless provider, TracFone Wireless, Inc. (U-4321-C), which had refused to collect and remit surcharges and user fees.

On December 17, 2009, the Commission opened an Order Instituting Investigation (OII) into the alleged failure of TracFone Wireless, Inc. (U-4321-C) to collect and remit public purpose program surcharges and user fees on intrastate revenue earned from its sale of

Partnership (U-3032-C); Sacramento Valley Limited Partnership (U-3004-C), Verizon Wireless (VAW) LLC (U-3029-C) and WWC License L.L.C. (U-3025-C).

prepaid wireless services to California consumers. The Commission held evidentiary hearings in February, 2011, with opening and reply briefs submitted in March and April 2011, respectively. The Commission subsequently issued Decision (D.)12-02-032 on February 16, 2012, affirming that TracFone is a telephone corporation, and that telephone corporations are obligated to collect and remit surcharges and user fees for intrastate revenues earned on prepaid wireless services. The decision ruled that TracFone acted unlawfully – violating statutes and Commission decisions – by failing to pay surcharges and user fees on sale of prepaid wireless services.

Although D. 12-02-032 was directed to TracFone specifically, the decision reinforced the Commission staff position that telephone corporations, like Verizon, are obligated to collect and remit surcharges and user fees on their prepaid wireless services. Accordingly, Verizon soon thereafter became compliant and began paying surcharges and user fees to include its prepaid wireless services beginning in February 2012. As of January 2014, Verizon continues to pay surcharges and user fees to include prepaid wireless services.

DISCUSSION

Although Verizon has been compliant going forward in paying surcharges and user fees on prepaid wireless services since February 2012, Verizon has an outstanding obligation of owed surcharges and user fees covering the period prior to February 2012.

In the fall of 2013, Verizon initiated meetings with CD staff to discuss ways to determine the amount owed and to resolve the outstanding obligation. To determine the amount owed, CD requested that Verizon research its financial records to ascertain the extent of prepaid wireless service revenues accrued in California during the period prior to February 2012. After researching its records, Verizon reported that it had uncovered revenue information going back to August 2005, showing intrastate revenues from prepaid wireless services for a multi-year period totaling in excess of \$365 million. Finding no other information to show that Verizon engaged in the prepaid wireless business before August 2005, CD concluded that Verizon made a good faith effort to determine the amount earned. After applying associated public purpose surcharge and user fee rates in effect over that period, Verizon and CD then determined that the total past due obligation for owed surcharges was \$9,974,691 and for owed user fees, \$571,298.

Following a series of meetings and written communications during 2014, Verizon submitted a proposal to CD in December 2014 that offered to pay \$10,545,989 for all past unpaid surcharges (\$9,974,691) and user fees (\$571,298). This proposal covers the period from when Verizon began earning prepaid wireless revenues (August 2005) to the month before the company became complaint (January 2012). In addition,

Verizon's proposal included a provision for interest, as the company proposed to use one-half of the average 90-Day AA Financial Commercial Paper Interest Rate for the years 2005 through 2014,³ These years were selected because they covered the span beginning with the month and date that prepaid wireless service began and extending through the calendar year 2014, while interest accrued on the unpaid amount. The interest calculation from this methodology totals \$645,367. As Verizon has proposed that no penalties be applied, Verizon's total proposal to resolve its unpaid obligation here is to make a payment to the Commission of \$11,191,356.

CD has reviewed the Verizon proposal. Through this Resolution, CD recommends the Commission adopt Verizon's proposal as a fair and reasonable offer to resolve the outstanding obligation for the following reasons:

1. **Principal:** The proposal would provide 100% of all unpaid surcharges and user fees based on accrued revenue from prepaid wireless services Verizon during the period when Verizon excluded this revenue in its surcharge and user fee remittance calculations. Accordingly, the Commission would be fully compensated for all past surcharges and user fees owed during this period from prepaid wireless services.
2. **Interest:** The proposal would provide an increment for interest to recognize the time value of money from not receiving the surcharges and user fees on a monthly basis in prior years.

CD researched various Commission citations and authorities to determine an appropriate methodology or mechanism establishing an interest amount to be added to the unpaid surcharge and user fees. Although General Order 153 at Section 9.8.6 sets forth a 10% interest rate for late remittances, that same General Order in Section 14 establishes a waiver process delegated to the CD Director to decide/justify approving a lower interest rate or no interest at all. Specifically, Section 14.4 *Requests for waiver of California Lifeline Administrative Requirements* states in relevant part:

If a waiver involves the payment of money to or from a California LifeLine Service Provider, CD may determine what rate of interest, if any, should apply to the payments(s) subject to the waiver.

CD staff found that General Order 153 also authorizes the use of the three-month (i.e. 90 days) Commercial Paper Rate as a means to pay carriers when the Commission is late in paying claims. Given that this interest rate has been used to compensate for the time value of money from late

³ Source: Website for the Board of Governors of the Federal Reserve, www.federalreserve.gov

payments, we believe that the proposal by Verizon based on the 90-day Commercial Paper Rate index is a fair and reasonable attempt to address the company's delinquency in paying surcharges and user fees.

3. **Penalties:** Although Verizon's proposal does not include penalties, CD is not advocating an assessment for penalties here given the following factors:
 - a) Verizon has voluntarily come forward to resolve its unpaid obligations;
 - b) Verizon had formally petitioned to resolve this matter in 2009, although the Commission focused its efforts on more egregious compliance issues with TracFone instead;
 - c) Verizon immediately complied with the findings in D. 12-02-032 and submitted surcharges and user fees covering prepaid wireless service beginning in February 2012;
 - d) The Commission has issued no order finding that Verizon violated any statute, including Section 2107, as a result of the prior non-payment of these surcharges and user fees.
4. **Litigation Avoidance:** By accepting the proposal, potential Commission litigation can be avoided. We note that the TracFone OII involving similar issues took over four years to resolve involving significant staff resources to prosecute and evaluate the issues.⁴ While Verizon has offered its proposal in good faith to satisfy the outstanding claim, Verizon also has asserted that it has strong legal arguments if the Commission were to open an OII in this matter. Although CD disputes that litigation here would yield a different outcome from that rendered in D. 12-02-032, CD is mindful that avoiding litigation would allow the Commission to focus resources on other pressing regulatory issues. More notably, since Verizon has agreed to pay all the principal of unpaid surcharges and user fees, and has included an increment for interest; CD supports resolving this matter via this Resolution and avoiding costly and time-consuming litigation.

In conclusion, , CD supports Verizon's proposal whereby Verizon will pay \$11,191,356 to the Commission to settle all claims relating to the payment of all public purpose program surcharges and user fees for prepaid wireless services for the period prior to February 1, 2012. The Commission should direct Verizon to submit the \$11,191,356 payment within 30 days of the effective date of this resolution by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102. Verizon should write on the face of the check or money order the following: "For deposit to Commission program budgets as set forth in Resolution T-17470."

⁴ TracFone appealed the two decisions in that docket through the appellate courts.

After receipt of the payment, the Commission's Fiscal Office should confer with CD staff to credit the following program funds for the payment received: Universal Lifeline Telephone Service, Deaf and Disabled Telecommunications Program, California High Cost Fund-A, California High Cost Fund-B, California Teleconnect Fund, the California Advanced Services Fund, and the Public Utilities Commission Utility Reimbursement Account.

SAFETY CONSIDERATIONS

This resolution bears no significant impact on safety issues. However, the additional surcharge and user fee revenue paid to support Commission programs positively impacts the provision of access to quality telecommunications service which supports public safety.

COMMENTS

Public Utilities Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on February 6, 2015, informing Verizon Wireless, of the availability of this draft resolution for comments, as well as the availability of the confirmed resolution, if adopted by the Commission, on the Commission's website www.cpuc.ca.gov.

FINDINGS

1. The Commission collects and distributes funds to support six public purpose programs for the benefit of California ratepayers. These programs are mandated by Public Utilities Code §§ 270-278.5 and §§ 280-281.
2. The Commission collects funds as authorized by P.U.C. §§ 401 and 402 as Public Utilities Commission Reimbursement Fees (user fees), providing the authority to collect these user fees from customers through the carriers' billings. Revenues collected in the form of this fee fund the operating budget of the Commission, which allows it to regulate telecommunications utilities.
3. On August 13, 2008, the Utility Audit, Finance, and Compliance Branch of the Commission's Division of Water and Audits issued a Final Report on the Regulatory Compliance Audit of the Public Programs Surcharges and Claims and User Fees for the year ending December 31, 2006, identifying Verizon as not paying surcharges and user fees on revenues collected for prepaid wireless service.

4. The Communications Division Director issued a letter citing the audit report on January 28, 2009, stating that Verizon owed \$386,685 in unpaid surcharges, user fees, and interest.
5. On May 8, 2009, Verizon remitted \$44,957 of the \$386,685 in unpaid surcharges. This letter was accompanied by a summary of audit findings, itemizing various exceptions (referred to as “exempt customer issues”) that Verizon claimed in justifying the lower payment, summing to \$44,957.
6. The Commission issued Phase 1 Decision (D.)12-02-032, affirming that TracFone is a telephone corporation and that telephone corporations are obligated to collect and remit surcharges and user fees on prepaid wireless services. The decision ruled that TracFone acted unlawfully – violating statutes and Commission decisions – by failing to pay surcharges and user fees earned from prepaid wireless services.
7. Since the issuance of D. 12-02-032, Verizon has been compliant going forward in paying surcharges and fees on prepaid wireless services since February 1, 2012, but it has an outstanding obligation of owed surcharge and user fees covering the period prior to February 2012.
8. In the fall of 2013, Verizon initiated meetings with CD staff to discuss ways to determine the amount owed and to resolve the outstanding obligation from not paying surcharges and user fees from prepaid wireless service revenue.
9. Revenue reported by Verizon and accepted by CD for the period August 2005 through January 2012 associated with prepaid wireless service is in excess of \$365 million. After applying public purpose surcharge and user fee rates in effect over the period, Verizon and CD determined that the total past due obligation for owed surcharges was \$9,974,691, and for owed user fees, \$571,298. The total past unpaid surcharges and user fees are \$10,545,989.
10. Verizon proposed an interest rate based on one-half of the average 90-Day AA Financial Commercial Paper Interest Rate for the years 2005 through 2014. The proposed interest calculation based on this methodology totals \$645,367.00.
11. The proposal would provide 100% of all unpaid surcharges and user fees from Verizon prepaid wireless service revenue incurred during the period when Verizon did not include this amount in its remittances.
12. General Order 153 at 14.4 establishes a waiver process delegated to the CD Director to decide/justify approving a lower interest rate or no interest at all.

13. Commission has issued no order finding that Verizon violated any statute, including Section 2107, as a result of the prior non-payment of these surcharges and user fees.
14. CD supports the Commission adoption of Verizon proposal to pay \$11,191,356 to the Commission to settle all claims relating to the payment of all public purpose program surcharges and user fees for prepaid wireless services for the period prior to February 1, 2012.
15. The Commission should direct Verizon to submit the \$11,191,356 payment within 30 days of the effective date of this resolution by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102. Verizon should write on the face of the check or money order "For deposit to Commission program budgets as set forth in Resolution T-17470.
16. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on February 6, 2015 informing Verizon Wireless, of the availability of this draft resolution for comments, as well as the availability of the confirmed resolution, if adopted by the Commission, on the Commission's website www.cpuc.ca.gov

THEREFORE, IT IS ORDERED that:

1. The Commission approves a payment by Verizon Wireless Inc. LLC of \$10,545,989 million in unpaid surcharges and \$645,367 million in interest calculated at one-half of the average 2005 through 2014 calendar year 90-day AA Financial Commercial Paper Interest Rate, for the claim period spanning from August 1, 2005 through January 31, 2012. The total payment equals \$11,191,356.
2. As payment for public purpose program surcharges under Public Utilities Code Sections 270-278.5 and 280-281, and user fees under Public Utilities Code Sections 401-402, accrued from August 2005 through January 2012, including interest, Verizon Wireless Inc. LLC shall pay \$11,191,356.00 within 30 days of the effective date of this resolution by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Cashiering Unit, San Francisco, CA 94102. Verizon Wireless, Inc. must write on the face of the check or money order "For deposit to Commission program budgets as set forth in Resolution T-17470.

3. The payment made by Verizon Wireless Inc. LLC, pursuant to Ordering Paragraph 1, shall be credited to the following program funds: Universal Lifeline Telephone Service, Deaf and Disabled Telecommunications Program, California High Cost Fund-A, California High Cost Fund-B, California Teleconnect Fund, and the California Advanced Services Fund, and the Public Utilities Commission Utility Reimbursement Account.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on March 12, 2015, the following Commissioners voting favorable thereon:

TIMOTHY J. SULLIVAN
Executive Director